THE HON'BLE SRI JUSTICE K.C. BHANU

W.P.Nos.24974 OF 2001&1068 of 2002

COMMON ORDER:

Since the issue involved in both the writ petitions is similar, they are being disposed by a common order.

Both the writ petitions are filed challenging the action of the respondents in not regularizing the services of the petitioners in the posts held by them as arbitrary and discriminatory and consequently to direct the respondents to regularize their services from the date of their initial appointment.

The brief facts that are necessary for the disposal of the present writ petitions may be stated as follows:

The petitioners were selected and appointed by a duly constituted selection committee for the post of Matron in
Sri Padmavathi Women's College Hostels, T.T.D., Tirupati.
The Matrons have been granted the scale of pay applicable to the cadre of Junior Assistant in the T.T.Devasthanams. Number of persons have been appointed as N.M.R workers in the hostels attached to the S.P.W. College, S.V. Arts College and S.G.S. Arts College etc. On the request of the N.M.R. workers, who were appointed in the said hostels, the T.T.D. Management has decided to absorb all those engaged in the college hostels in T.T.Ds service. The T.T.D. Trust Board, in exercise of its powers vested under Rule 10 of the T.T.D. Service Rules issued in G.O.Ms.No.1060, Revenue (Endts.III) Department, dated
24-10-1989, has resolved vide Resolution No.192, dated
03-06-1991 to create 139 posts in different categories in the college hostels under the management of the T.T.D to absorb

all the workers engaged in the college hostel. Accordingly,
the services of 139 hostel workers, who were in service as on 03-06-1991, were regularized w.e.f. 03-06-1991. The second respondent requested the Government to ratify the above action of the T.T.D. and accordingly the Government ratified the same in creating 139 posts in various categories including the posts of Matrons in S.P.W. College Hostels and issued orders
in G.O.Ms.No.673, Revenue (Endts.III) Department, dated
12-10-2001. It is submitted that the petitioners have been granted consolidated pay of Rs.1,500/- per month at the time of their initial appointment in the year 1992 and they were continued with the same consolidated pay, though they were appointed in the sanctioned vacant posts on the ground that the Government has not issued orders ratifying the action of creation of posts, including the posts held by the petitioners. Thereafter, the Government passed orders in G.O.Ms.No.673, dated 12-10-2001, ratifying the action of the T.T.D. Management in creating various posts, including the posts of Matrons in S.P.W. college hostel w.e.f. 03-06-1991, in which the petitioners were appointed in the year 1992. But the second respondent has not regularized the services of the petitioners and not granted them the time scale of pay attached to the posts held by them. Challenging the same, the present writ petitions have been filed.

Learned counsel appearing for the petitioners in both the writ petitions contended that the petitioners are working as Matrons in Padmavathi Women's Degree College Hostels and they were selected by a duly constituted selection committee in the sanctioned posts and are fully qualified to hold the posts; that the T.T.D. by the Resolution No.192, dated 03-06-1991 created 139 posts and all those persons were absorbed as hostel workers and their services were regularized with effect from
03-06-1991; that the 139 posts sanctioned by the Government include the post of Matrons in the college hostels and that since the Government has approved the

resolution of the Board in creation of posts vide G.O.Ms.No.673, Revenue (Endts.III) Department, dated 12-10-2001 and the petitioners were being paid Rs.1,500/- per month consolidated salary; therefore, they are entitled for regularization.

On the other hand, the contention of the learned counsel for the respondents is that the appointments were made purely on temporary basis by the hostel authorities and not by the T.T.D. management; that the Board passed resolution to regularize the services of the persons employed in all T.T.D. hostels, who have completed 5 years of service, and therefore, the services of 139 persons were regularized; that since the petitioners are not covered by the said resolution, they are not entitled for regularization and hence, he prays to dismiss the writ petition.

It is admitted that in W.P.No.24974 of 2001, the first petitioner was appointed as a Matron in the place of one M.Devaki, who resigned on 01-07-1991, the second petitioner was appointed as a House Manager in a newly sanctioned post and the third petitioner was appointed as a Matron on 22-08-1982, whereas the petitioner in W.P.No.1068 of 2002 was appointed as a Matron by the orders dated 22-08-1992, by a duly constituted selection committee.

Though it is stated that all the appointments were made by the hostel authorities and not by the T.T.D. Management, the counsel for the respondents contended that as per Rule 5 (i) of T.T.D. Employees Service Rules 1989, the Executive Officer shall be the appointing authority in respect of all the posts except the posts for which Government is the appointing authority.

Resolution No.751, dated 01-12-1990 was passed to regularize the services of the hostel workers in the T.T.D. colleges as a separate unit. The total strength of the hostel workers in all the T.T.D. colleges is 139 members. As per the said Resolution, the Chief Warden/Deputy Warden shall have the power to appoint the employees on temporary basis. As per the Proceedings of the Executive Officer dated 21-06-1991 in Roc.No.D8/28071/87, the Board resolved to treat the hostel workers of S.P.W.

College, S.V. Arts college and another college as a separate unit and the Chief Warden/Deputy Warden shall have the power to appoint employees on temporary basis whenever there is a need for additional staff to run the hostel with prior approval of the Hostel Committee and the Executive Officer, T.T.Devasthanams.

With regard to the disciplinary matters, the Warden/Deputy Warden is competent to take disciplinary action. The Resolution also reads that in respect of the staff sanctioned for the hostel by the Commissioner, Endowments, they should be governed by

the Rules applicable to other similar employees of the T.T.Devasthanams. The Executive Officer of the T.T.D., by proceedings dated 24-08-1991, granted permission to fill up the posts, which are vacant in the hostel of S.P.W. College, duly following the guidelines communicated in the proceedings dated 21-06-1991 for making appointments in the hostel with the

prior approval of the Executive Officer and Hostel Committee.

The Hostel Committee by its proceedings dated 25-12-1991, permitted to appoint 2 posts of House Managers with two posts of panel and 2 posts of Matrons. The list of employees, who are appointed on consolidated salary, shows that the first petitioner was appointed as a Matron in the vacant post of P.Munemma and the second petitioner was appointed as a House Manager in the newly sanctioned post and the third petitioner was appointed as a Matron in the vacant post of M.Devaki and the other petitioner in W.P.No.1068 of 2002 was appointed as a Matron in the vacant post of A.Padmavathamma. Thereafter, the T.T.D. Board of Trustees, as per the powers vested with them under Rule 10 of T.T.D. Service Rules issued in G.O.Ms.No.1060, Revenue Department, dated 24-10-1989, had resolved to create 139 posts in different categories to absorb the services of these hostel workers as a separate unit and passed resolution No.192, dated 03-06-1991. Accordingly, instructions were issued to all the Colleges for regularization of the services of 139 hostel workers with effect from 03-06-1991. When the Executive Officer, T.T.D.,

requested the Government to ratify the above action of the T.T.D. Board of Trustees, the Government ratified the action of the T.T.D. for having created 139 posts in different categories to absorb the services of the persons working on N.M.R/Consolidated Pay basis in the hostels attached to the college under the management of T.T.D. so as to extend all service benefits to the employees on par with T.T.D. employees, by its G.O.Ms.No.673, dated 12-10-2001. The list of 139 employees, which was shown in Annexure-I to the proceedings of the T.T.D. dated 27-07-2002, would go to show that there were 21 posts in Junior Assistant Cadre i.e., Matron, House Manager etc. The names of M.Devaki, P.Munemma and A.Padmavathamma were shown as Matrons in Sri Padmavathi Women's College Hostel, where three of the petitioners were appointed in others place, whereas the other post is created. Three petitioners were appointed in the vacant posts of P.Munemma, M.Devaki, and A.Padmavathamma, who resigned in the year 1991. The T.T.D. Board by its Resolution No.278, dated 01-07-1994 have exempted the hostel workers from possessing requisite qualifications and relaxed the upper age limit in the case of hostel workers as per the statement enclosed.

After creation of 139 posts, admittedly, the services of all the N.M.R employees in the T.T.D. hostels, who have completed 5 years of continuity service, have to be regularized.

The contention that the petitioners were not covered by the Board's Resolution No.192, dated 03-06-1991, and as ratified by the Government, cannot be accepted in view of the fact that the 139 posts include 3 posts of Matrons. Those Matrons, who have been referred to in the resolution and as ratified by the Government, have resigned and in their places three of the petitioners have been appointed.

It is not in dispute that the petitioners are being paid the consolidated pay of Rs.1,500/- per month for all these years for the reason that their services have not been regularized.

As per the Proceedings of the T.T.D. dated 27-07-2002, the services of 139 employees working in various hostels under

the management of the T.T.D. have been regularized with

effect from 03-06-1991. The said 139 persons include M.Devaki, P.Munamma and A.Padmavathamma. Admittedly, three of the petitioners have been appointed in their places. Since those of the individuals resigned from their respective jobs, the present petitioners have been appointed by a duly constituted selection committee. Therefore, having regularized the services of 139 employees, which include three persons who are resigned, there is no reason for not regularizing the services of the petitioners. When the services of some of the employees working in the hostels of the T.T.Devasthanams have not been regularized, they filed W.P.No.18873 of 1004 before this Court and this Court by its order dated 22-11-1995, directed the respondents to create three more posts in the cadres in which the petitioners therein are working and regularize their services. When the Writ Appeal was filed against the order in the writ petition with a delay condonation, the delay was not condoned and therefore, the appeal was dismissed. Following the said order in W.P.No.18873 of 1994, this Court in W.P.No.25861 of 1996, dated 13-09-1997, directed the respondents therein to regularize the services of the petitioners therein. In the same manner, this Court in W.P.No.20913 of 1996, dated 15-10-1997, also directed the T.T.Devasthanams to regularize the services of the petitioners therein. The case of the petitioners herein stands on a much better footing in view of the fact that out of four petitioners, three petitioners were appointed in the regular posts created by the T.T.Devastanam and as ratified by the Government. With regard to the other post that was created by the T.T.Devasthanams, subsequent to the filing of the

writ petitions, the Executive Officer by its proceedings, dated

18-10-2003, sent proposals to the Government to accord permission to regularize the N.M.R hostel workers by creating
39 posts. The Government by his memo dated 04-12-2003 requested the T.T.D. to send the vacancy position in the T.T.D. college hostels. Thereupon, a reply was sent by the T.T.D. intimating the Government that there were 35 vacancies in all the T.T.D. college hostels and requesting to permit to regularize the services of 35 workers in Class IV posts.

This Court directed the respondents by way of an interim direction, dated 14-03-2005, to consider the absorption of the petitioners in the existing vacancies of Matrons. The Executive Officer, by his proceedings dated 02-05-2005, stated that there are senior N.M.Rs for regularization before the petitioners and therefore, the petitioners are not qualified.

The learned counsel for the respondents placed reliance
on the educational qualifications for the post of Matron in S.V.Balamandir. According to those proceedings, for a Matron post, one must have passed Intermediate and also must
possess Secondary Grade Teacher Training Certificate. These two are the requisite qualifications for a Matron post in S.V.Balamandir, but not relating to the hostels. On this aspect, the learned counsel for the petitioners relied upon a decision reported in **BHAGWATI PRASAD v. DELHI STATE MINERAL DEVELOPMENT CORPN.** , wherein it was held:

> "The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years' experience, ignoring artificial break in service for short period/periods created by the

respondent, in the circumstances, would be sufficient for confirmation."

In this case also, the petitioners were initially appointed in the year 1992 on consolidated pay basis by a duly constituted selection committee and they have been continuously working without any break in the hostels as Matrons. Therefore, even if there are some Rules requiring the minimum qualifications, but for the last thirteen years, the petitioners have been working and therefore, their experience would be sufficient for confirmation.

The respondents' counsel placed strong reliance on the proceedings of the T.T.D. dated 01-02-2005, which shows that the Board, in its Resolution No.519, dated 20-01-2005, has resolved to down-grade the following superior cadre posts to the posts of last grade service which were created and sanctioned by the Government in G.O.Ms.No.673, dated 12-10-2003, which includes 7 posts of Typist-cum-Clerk/Matron, House Manager, Bill Clerk etc. so as to absorb all the cadres. The said proceedings cannot be relevant for the purpose of deciding this case. The case of the petitioners cannot be equated with the hostel workers, which is admittedly in the last grade service.

In any view of the matter, the proceedings of the Executive Officer dated 01-02-2005 is not the subject matter of these writ petitions. But, the question is whether the services of the petitioners have to be regularized. Since the petitioners have been appointed by a duly constituted selection committee in the regular vacancies, their services have to be regularized.

There cannot be any dispute that a person appointed temporarily, on adhoc basis, has no right to the post. But, if the temporary appointments were made against the sanctioned posts and the policy of adhocism is followed by a long period without filling up of those posts on regular basis, then this Court can come to the rescue of the persons who have been working for a long period.

In the decision reported in **DHIRENDRA CHAMOLI v. STATE OF U.P.** , the apex Court emphasized the necessity of existence of sanctioned posts in the context of regularization of casual workers. There are dicta of the apex Court that if an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State. Since the initial entry into the service of the petitioner is authorized and is not against sanctioned vacancy, the regularization of the incumbent on such existing vacancy is a ground for regularization or confirmation.

Admittedly, the petitioners have been in continuity of service whatsoever and discharging duties without any adverse remarks. The services of the hostel employees in the category of N.M.R., who were appointed without any selection and without any posts, have been absorbed in the regular scale of pay and the Government has ratified the action of the T.T.D. in creating the posts, whereas the case of the petitioners stands on a much better footing in view of the fact that they were selected and appointed through a regular selection process in the sanctioned posts. Therefore, the Second respondent is directed to regularize the services of the petitioners in the posts held by them.

The writ petitions are allowed accordingly. In the circumstances, no order as to costs.

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JUSTICE K.C.BHANU

Date: -08-2005.

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